

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID W.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 3:19-cv-05513

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of Defendant's denial of his application for supplemental security income ("SSI") benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the ALJ's decision is reversed and remanded for further proceedings.

I. ISSUES FOR REVIEW

1. Did the ALJ err in evaluating the medical opinion evidence?
2. Did the ALJ properly assess Plaintiff's testimony?

II. BACKGROUND

Plaintiff first filed applications for supplemental security income and disability insurance benefits on June 5, 2012, alleging in both applications a disability onset date of March 31, 2008. AR 313. Plaintiff's applications were denied upon initial

administrative review and on reconsideration. *Id.* A hearing was held before Administrative Law Judge (“ALJ”) Gary Elliot on May 30, 2014. *Id.* On July 14, 2014, ALJ Elliot issued a written decision finding that Plaintiff was not disabled. AR 310-28. On August 5, 2015, the Social Security Appeals Council denied Plaintiff’s request for review. AR 334-40. On March 28, 2016, this Court issued an order affirming ALJ Elliot’s decision. AR 352-63.

Plaintiff filed a new application for SSI on September 2, 2014, again alleging a disability onset date of March 31, 2008. AR 134, 476-82. Plaintiff's application was denied initially and upon reconsideration. AR 134, 392-99, 403-08. A hearing was held before ALJ S. Andrew Grace on June 29, 2017. AR 275-309. On April 16, 2018, ALJ Grace issued a decision finding that Plaintiff was not disabled. AR 131-51. On April 9, 2019, the Appeals Council denied Plaintiff's request for review. AR 1-7.

Plaintiff seeks judicial review of the ALJ's decision. Dkt. 4.

III. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of Social Security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

IV. DISCUSSION

In this case, the ALJ found that Plaintiff had the severe, medically determinable impairments of degenerative disc disease; status post right total knee arthroplasty surgery; left knee medial meniscus tear, status post left knee arthroscopy and partial

1 medical meniscectomy surgeries; status post right rotator cuff repair; right tibial plateau
2 fracture, status post open reduction internal fixation (“ORIF”); status post left elbow
3 ulnar nerve transposition; obesity; depression; and anxiety. AR 137. The ALJ also found
4 that Plaintiff had a range of non-severe impairments. AR 137-38.

5 Based on the limitations stemming from these impairments, the ALJ found that
6 Plaintiff could perform a reduced range of sedentary work. AR 140-41. Relying on
7 vocational expert (“VE”) testimony, the ALJ found that while Plaintiff could not perform
8 his past work, he could perform other sedentary, unskilled jobs at step five of the
9 sequential evaluation; therefore the ALJ determined at step five that Plaintiff was not
10 disabled. AR 150-51, 304-06.

11 A. Whether the ALJ erred in evaluating the medical opinion evidence

12 Plaintiff maintains that the ALJ erred by not providing sufficient reasons for
13 discounting the occasional handling and fingering limitations assessed by examining
14 physician Gary E. Gaffield, D.O. Dkt. 13, pp. 4-7.

15 In assessing an acceptable medical source – such as a medical doctor – the ALJ
16 must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of
17 either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
18 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990); *Embrey v. Bowen*,
19 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or examining physician’s opinion is
20 contradicted, the opinion can be rejected “for specific and legitimate reasons that are
21 supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing
22 *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d
23 499, 502 (9th Cir. 1983)).

1 Dr. Gaffield examined Plaintiff on September 8, 2017. AR 1474-87. Dr. Gaffield's
2 evaluation consisted of a review of the medical records and a physical examination.

3 Dr. Gaffield's examination of Plaintiff's hands revealed that Plaintiff was unable to
4 completely close his fists, had limited motion of his thumbs, and had sensory loss to
5 light touch and brush stroke in the fingers of both hands. AR 1484. Dr. Gaffield also
6 found that Plaintiff's grip strength in both hands to be 4/5. AR 1485.

7 Based on this evaluation, Dr. Gaffield issued a medical source statement
8 indicating that Plaintiff could stand and/or walk six hours in an eight-hour day, and
9 would have no sitting limitations. AR 1486. Dr. Gaffield added that Plaintiff could lift and
10 carry up to 50 pounds occasionally and 25 pounds frequently, and could occasionally
11 perform postural activities. *Id.* Dr. Gaffield stated that Plaintiff could perform
12 manipulative activities occasionally due to sensory loss and loss of dexterity in his
13 hands. *Id.* Dr. Gaffield further opined that Plaintiff should avoid working at heights or
14 around scaffolding, operating or working around heavy equipment, and navigating
15 irregular surfaces. AR 1487.

16 In a form attached to his evaluation, Dr. Gaffield offered a somewhat different
17 assessment of Plaintiff's functional limitations. In this form, Dr. Gaffield opined that
18 Plaintiff could stand and/or walk four hours in an eight-hour day, and sit for six hours.
19 AR 1475. Dr. Gaffield added that Plaintiff could lift and carry up to 50 pounds frequently.
20 AR 1474.

21 Dr. Gaffield further opined that Plaintiff could never reach overhead with his right
22 hand due to a limited range of motion in his right shoulder, but would otherwise have no
23 manipulative limitations. AR 1476. Dr. Gaffield found that Plaintiff could never climb
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1 ladders or scaffolds, but could occasionally perform all postural activities. AR 1476-77.
2 Dr. Gaffield stated that Plaintiff could occasionally tolerate exposure to moving
3 mechanical parts, motor vehicles, and extreme could, but could never work at
4 unprotected heights. AR 1478.

5 The ALJ assigned “partial weight” to Dr. Gaffield’s opinion, reasoning that while
6 Dr. Gaffield was familiar with Social Security regulations and had the opportunity to
7 examine Plaintiff, his opinion was: (1) internally inconsistent; and (2) inconsistent with
8 the medical record. AR 149-50.

9 With respect to the ALJ’s first reason, an internal inconsistency can serve as a
10 specific and legitimate reason for discounting a physician’s opinion. See *Morgan v.*
11 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999); see also *Rollins v.*
12 *Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (upholding ALJ’s rejection of an internally
13 inconsistent medical opinion).

14 As discussed above, there are several inconsistencies between the limitations
15 contained in Dr. Gaffield’s medical source statement and those included in the check
16 box form attached to his evaluation. Compare AR 1486-87, with AR 1474-78. In his
17 medical source statement, Dr. Gaffield opined that Plaintiff could perform all
18 manipulative activities occasionally -- and it is reasonable to infer this would include
19 handling and fingering -- due to sensory loss and loss of dexterity in his hands, a finding
20 broadly consistent with the results of his examination. AR 1486. But in the check box
21 form, Dr. Gaffield stated that Plaintiff could *continuously* handle and finger with both
22 hands, and opined that Plaintiff would have no manipulative limitations beyond being
23 unable to reach overhead with his right hand. AR 1476.

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1 Where the evidence is susceptible to more than one rational interpretation, one
2 of which supports the ALJ's decision, the ALJ's conclusion must be upheld. See
3 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citing *Morgan v. Comm'r of Soc.*
4 *Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999)).

5 Although it is possible that Dr. Gaffield might have mistakenly checked off fewer
6 manipulative limitations when completing the check box form than he actually meant to,
7 it is also reasonable to infer that the limitations indicated by Dr. Gaffield on this form are
8 a more accurate statement of his opinion concerning Plaintiff's limitations. Therefore,
9 multiple internal inconsistencies contained in his opinion permitted the ALJ to discount
10 the limitations Dr. Gaffield assessed concerning occasional handling and fingering.

11 In formulating Plaintiff's residual functional capacity ("RFC"), the ALJ found that
12 Plaintiff had a range of manipulative limitations broadly consistent with the results of Dr.
13 Gaffield's examination and incorporated the range of his contradictory opinions. AR
14 140-41; *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010) (even
15 when adopting a physician's opinion, an ALJ does not err by assessing RFC limitations
16 consistent with, but not identical to, those contained in the opinion).

17 Accordingly, the ALJ did not err in evaluating Dr. Gaffield's opinion.

18 B. Whether the ALJ erred in evaluating Plaintiff's testimony

19 Plaintiff contends that the ALJ erred by failing to give clear and convincing
20 reasons for discounting Plaintiff's symptom testimony his hand goes numb when holding
21 a telephone for even brief periods. Dkt. 14, pp. 7-8; AR 286.

22 In weighing a Plaintiff's testimony, an ALJ must use a two-step process. *Trevizo*
23 *v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine whether

1 there is objective medical evidence of an underlying impairment that could reasonably
2 be expected to produce some degree of the alleged symptoms. *Ghanim v. Colvin*, 763
3 F.3d 1154, 1163 (9th Cir. 2014). If the first step is satisfied, and provided there is no
4 evidence of malingering, the second step allows the ALJ to reject the claimant's
5 testimony of the severity of symptoms if the ALJ can provide specific findings and clear
6 and convincing reasons for rejecting the claimant's testimony. *Id.* See *Verduzco v.*
7 *Apfel*, 188 F.3d 1087, 1090 (9th Cir. 1999).

8 In discounting Plaintiff's symptom testimony concerning his physical impairments,
9 the ALJ reasoned that: (1) Plaintiff's allegations were inconsistent with his self-reported
10 activities of daily living; and (2) Plaintiff's impairments responded well to minimal,
11 conservative treatment. AR 146-48.

12 With respect to the ALJ's first reason, an ALJ may discredit a claimant's
13 testimony when the claimant reports participation in everyday activities indicating
14 capacities that are transferable to a work setting. See *Morgan v. Comm'r Soc. Sec.*
15 *Admin.*, 169 F.3d 595, 600 (9th Cir.1999).

16 However, disability claimants should not be penalized for attempting to lead
17 normal lives in the face of their limitations. See *Reddick v. Chater*, 157 F.3d 715, 722
18 (9th Cir. 1998), citing *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir.1987) (noting that a
19 disability claimant need not "vegetate in a dark room" in order to be deemed eligible for
20 benefits).

21 Here, the ALJ found that Plaintiff was able to perform activities inconsistent with
22 his allegation that his hands go numb when gripping objects for brief periods, including
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1 driving a car, riding a lawnmower and riding a motorcycle, all of which involve gripping
 2 for extended periods. AR 147, 514, 536, 552, 943, 1021, 1049-50, 1147, 1209, 1482.

3 The ALJ did not discuss Plaintiff's allegations concerning his hands in detail
 4 when evaluating his testimony. It is unnecessary for the ALJ to "discuss all evidence
 5 presented". *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir.
 6 1984) (citation omitted) (emphasis in original). However, an ALJ "may not reject
 7 'significant probative evidence' without explanation." *Flores v. Shalala*, 49 F.3d 562,
 8 570-71 (9th Cir. 1995) (quoting *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984)
 9 (quoting *Cotter v. Harris*, 642 F.2d 700, 706-07 (3d Cir. 1981))).

10 Beyond Plaintiff's brief allegation at the hearing, and Dr. Gaffield's opinions,
 11 which the ALJ properly discounted as internally inconsistent, Plaintiff otherwise denied
 12 any functional difficulties with his hands, despite alleging a range of other physical
 13 limitations. AR 516, 538, 554.

14 Plaintiff contends that he is not alleging that he cannot use his hands at all,
 15 merely that it became difficult to do so over time, and that his ability to ride a motorcycle
 16 is consistent with Dr. Gaffield's opinion that he could handle and finger occasionally.
 17 Dkt. 15, p. 2. For the reasons discussed above, the ALJ has properly discounted Dr.
 18 Gaffield's internally inconsistent opinion. See *supra* Section IV.A.

19 Further, during the hearing, Plaintiff asserted his hands go numb after holding a
 20 telephone for fewer than five minutes; this would be inconsistent with other evidence in
 21 the record about his use of both hands – evidence that shows he has the ability to ride a
 22 lawnmower, drive a car, and ride a motorcycle, all of which typically involve gripping
 23 handlebars or a steering wheel for more than five minutes. AR 286; *Batson v. Comm'r*

1 of Soc. Sec. Admin., 359 F.3d 1190, 1196 (9th Cir. 2004) (An ALJ may discount a
2 claimant's symptom allegations by pointing to "contradictions in the claimant's own
3 testimony about [her] activities of daily living."); *Orn v. Astrue*, 495 F.3d 625, 639 (9th
4 Cir. 2007) (noting that an ALJ may cite a claimant's activities of daily living as a reason
5 for discounting symptom testimony when the claimant's participation in those activities
6 contradict the claimant's other testimony).

7 Accordingly, the ALJ did not err in evaluating Plaintiff's testimony.

8 **C. Additional evidence**

9 The record contains evidence submitted by Plaintiff after the ALJ issued his
10 decision. AR 8, 21--130, 158-181-274. The Appeals Council denied review of Plaintiff's
11 claim and decided to not exhibit this evidence, because either it did not relate to the
12 period at issue or it did not show a reasonable probability of changing the outcome. AR
13 2.

14 This Court must consider this additional material in determining whether the
15 ALJ's decision is supported by substantial evidence. See *Brewes v. Commissioner of*
16 *Social Security*, 682 F.3d 1157, 1160 (9th Cir. 2012) (when a claimant submits evidence
17 for the first time to the Appeals Council, which considers that evidence in denying
18 review of the ALJ's decision, the new evidence is part of the administrative which the
19 district court must consider in determining whether the Commissioner's decision is
20 supported by substantial evidence).

21 While much of this evidence was generated after the ALJ issued his decision on
22 April 16, 2018, some of it was issued shortly thereafter, and includes evidence relevant
23 to the period at issue. For example, examining physician Brian Lear, M.D., on April 30,
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1 2018, assessed a range of work-related physical limitations potentially consistent with a
2 finding of disability; Dr. Lear's opinion states those limitations relate back to March
3 2008. AR 46-48. And, clinical psychologist Kimberly Wheeler, Ph.D., who examined
4 Plaintiff on May 3, 2018 has opined that Plaintiff would have a range of marked mental
5 limitations. AR 40-44. In her assessment, Dr. Wheeler notes that she reviewed a
6 previous psychological evaluation from June 2012, and she notes Plaintiff states "he
7 began getting depression after being injured in 2008". AR 41.

8 D. Remand for Further Proceedings

9 Plaintiff asks this Court to remand this case for an award of benefits. Dkt. 13, p.
10 9. "The decision whether to remand a case for additional evidence, or simply to award
11 benefits[,] is within the discretion of the court." *Trevizo v. Berryhill*, 871 F.3d 664, 682
12 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). If an
13 ALJ makes an error and the record is uncertain and ambiguous, the court should
14 remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045
15 (9th Cir. 2017). Likewise, if the court concludes that additional proceedings can remedy
16 the ALJ's errors, it should remand the case for further consideration. *Revels*, 874 F.3d
17 at 668.

18 The Ninth Circuit has developed a three-step analysis for determining when to
19 remand for a direct award of benefits. Such remand is generally proper only where

20 "(1) the record has been fully developed and further administrative
21 proceedings would serve no useful purpose; (2) the ALJ has failed to
22 provide legally sufficient reasons for rejecting evidence, whether claimant
testimony or medical opinion; and (3) if the improperly discredited
evidence were credited as true, the ALJ would be required to find the
claimant disabled on remand."

1 *Trevizo*, 871 F.3d at 682-83 (quoting *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir.
2 2014)). The Ninth Circuit emphasized in *Leon v. Berryhill* that even when each element
3 is satisfied, the district court still has discretion to remand for further proceedings or for
4 award of benefits. 80 F.3d 1041, 1045 (9th Cir. 2017).

5 Here, additional evidence submitted after the ALJ issued his decision, relating
6 back to the period at issue, indicates that the ALJ's decision may not be supported by
7 substantial evidence. There remains significant doubt concerning whether the ALJ
8 would be required to find Plaintiff disabled on remand. See *Garrison v. Colvin*, 759 F.3d
9 995, 1021 (9th Cir. 2014) (courts have the flexibility to remand for further proceedings
10 when the record as a whole creates "serious doubt" as to whether the claimant is
11 disabled within the meaning of the Social Security Act.). Accordingly, remand for further
12 proceedings is the appropriate remedy.

13 CONCLUSION

14 Based on the foregoing discussion, the Court finds there is new information
15 about Plaintiff's conditions and limitations, and it must be considered by the ALJ; the
16 ALJ erred when she found Plaintiff to be not disabled. Defendant's decision to deny
17 benefits is therefore REVERSED and this matter is REMANDED for further
18 administrative proceedings. The ALJ is directed to re-open the record, and assess the
19 additional evidence on remand.

20 Dated this 14th day of October, 2020.
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22 Theresa L. Fricke
23 United States Magistrate Judge
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